



[6710-01 P]

FARM CREDIT SYSTEM INSURANCE CORPORATION

Adjusting Civil Money Penalties for Inflation

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice.

SUMMARY: This notice assesses the need for cost-of-living adjustments to the civil money penalties (CMPs) that the Farm Credit System Insurance Corporation (FCSIC) may impose under the Farm Credit Act of 1971, as amended. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires all Federal agencies with statutory authority to impose CMPs to regularly evaluate those CMPs and to adjust them periodically for inflation, so they continue to maintain their deterrent value. Consequently, FCSIC is issuing this notice concerning any required adjustments to the CMPs.

FOR FURTHER INFORMATION CONTACT:

Rick Pfitzinger, Director Risk Management or Howard Rubin, General Counsel, Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883-4380, TTY (703) 883-4390.

SUPPLEMENTARY INFORMATION:

Background

A. Statutes Concerning Inflation Adjustment of Civil Money Penalties

The Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIA Act),¹ as amended by the Debt Collection Improvement Act of 1996 (DCIA),² provides for the regular evaluation of CMPs and requires FCSIC, and every other Federal agency with authority to impose CMPs,³ to ensure that CMPs continue to maintain their deterrent values. An agency must enact regulations that adjust its CMPs pursuant to the inflation adjustment formula of the FCPIA Act. The amended FCPIA Act specifies that inflation-adjusted CMPs will apply only to violations that occur after the effective date of the adjustment. The inflation adjustment is based on the percentage increase in the Consumer Price Index (CPI) for all consumers (CPI-U).⁴ Specifically, the term "cost-of-living adjustment" is defined as "the percentage (if any) for each civil monetary penalty by which (1) the Consumer Price Index for the month of June of

¹ Pub. L. 101-104, 104 Stat. 890 (October 5, 1990), codified at 28 U.S.C. 2461 note.

² Pub. L. 104-134, title III, section 31001(s), 110 Stat. 1321-373 (April 26, 1996), codified at 28 U.S.C. 2461 note.

³ Under the amended FCPIA Act, a CMP is defined as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts. All three requirements must be met for a fine to be defined as a CMP.

⁴ The CPI is published by the Department of Labor, Bureau of Labor Statistics, and is available at its website: <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiiai.txt>.

the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law." Furthermore, any increase to a CMP that is adjusted for inflation must be rounded using a method prescribed by the FCPIA Act.

Agencies do not have discretion in choosing whether to adjust a CMP, by how much to adjust a CMP, or the methods used to determine the adjustment.

B. CMPs Imposed Pursuant to Section 5.65 of the Farm Credit Act

First, section 5.65(c) of the Farm Credit Act, as amended (Act) provides that any insured Farm Credit System bank that willfully fails or refuses to file any certified statement or pay any required premium shall be subject to a penalty of not more than \$100 for each day that such violations continue, which penalty the FCSIC may recover for its use.⁵ Second, section 5.65(d) of the Act provides that, except with the prior written consent of the Farm Credit Administration, it shall be unlawful for any person convicted of any criminal offense involving dishonesty or a breach of trust to serve as a director, officer, or

⁵ 12 U.S.C. 2277a-14(c).

employee of any System institution.⁶ For each willful violation of section 5.65(d) of the Act, the institution involved shall be subject to a penalty of not more than \$100 for each day during which the violation continues, which the FCSIC may recover for its use.

As adjusted for inflation pursuant to the requirements of the DCIA, the current regulation at 12 CFR 1411.1, which was promulgated in 2001, provides that FCSIC can impose a maximum penalty of \$117 per day for a violation under section 5.65(c) and (d) of the Act.

C. Mathematical Calculation

1. The adjustment calculation is based on the percentage by which the CPI for June 2012 exceeds the CPI for June 2001. According to the Bureau of Labor Statistics, the CPI for June 2001 was 178, and the CPI for June 2012 was 229.478, resulting in a percentage change of 28.92 percent.

2. Penalty amounts remain the same in 12 CFR 1411.1.

3. The maximum CMP in 12 CFR 1411.1 for a violation of section 5.65(c) or (d) of the Act is currently \$117.

⁶ 12 U.S.C. 2277a-14(d).

Multiplying \$117 by 28.92 percent results in \$33.84. When that number is rounded as required by the FCPIA Act,⁷ the inflation-adjusted maximum remains the same.

Dated: October 18, 2013.

Dale L. Aultman,
Secretary to the Board,
Farm Credit System Insurance Corporation.

⁷ Any increase must be rounded to the nearest multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000. Therefore, \$33.84 is rounded to the nearest multiple of \$100, which is \$0.

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